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16 **UNITED STATES DISTRICT COURT**

17 **DISTRICT OF NEVADA**

18 SCOTT POMER, ALLAN ARTEAGA-
19 BROWN, and MICHAEL
20 MAIENSCHEN individually and on
behalf of others similarly situated,

21 Plaintiffs,

22 vs.

23 RENO CAB COMPANY, ROY L.
24 STREET, ROBIN STREET, FRANK
25 STREET, and BRITTANY STREET

26 Case No.:
3:22-cv-00014-MMD-CLB

27 **ORDER APPROVING
SETTLEMENT**

28 Defendants.

1 The plaintiffs, SCOTT POMER, ALLAN ARTEAGA-BROWN, and
2 MICHAEL MAIENSCHEN, and the defendants, RENO CAB COMPANY, ROY
3 L. STREET, ROBIN STREET, FRANK STREET, and BRITTANY STREET, by
4 and through their respective counsel, having filed a Joint Motion to Approve
5 Settlement (Doc. 71, the “Settlement Motion”), seeking an Order approving the
6 proposed settlement of this case, as set forth in their Stipulation of Settlement, at Ex.
7 “A” thereto, and the Court, after due deliberation, and with good cause having been
8 shown, hereby makes the following findings of fact and conclusions of law:
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10 For the reasons stated in the Settlement Motion, the proposed settlement of
11 this case as set forth in the parties’ Stipulation of Settlement, to be made in
12 conjunction with and dependent upon the final approval the proposed class action
13 settlements of two cases pending in the First Judicial District Court of the State of
14 Nevada captioned *Shatz et al. v. Street*, and *Myers et al. v. Reno Cab*, (collectively
15 the “*Myers Litigation*”) is appropriate and warrants approval by this Court.

16 This case and the *Myers Litigation* both seek relief under Article 15, Section
17 16, of the Nevada Constitution for unpaid minimum wages allegedly owed to the
18 defendants’ taxicab drivers. This case additionally seeks to make claims under the
19 Fair Labor Standards Act (the “FLSA”) for unpaid minimum wages and to impose
20 liability on certain additional, non-corporate, defendants, under the FLSA, for the 38
21 FLSA “opt in” plaintiffs in this case.
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1 While there is a small difference in the nature of the relief available to the
2 plaintiffs in the *Myers* Litigation and this case the controlling issues of fact and law
3 in both cases are identical. The plaintiffs in both cases were taxi drivers who leased
4 taxicabs from the defendant Reno Cab Company or a related taxicab company
5 Capital Cab, pursuant to written agreements stating they were independent
6 contractors, not employees. The defendants insist all of those taxi drivers, and all
7 of the plaintiffs in both cases, were not employees and have no right to seek unpaid
8 minimum wages from the defendants, whether under Nevada law or the FLSA.
9 Whether the plaintiff taxi drivers in these cases were, as a matter of law, employees
10 entitled to minimum wages, or independent contractors without any such right, is
11 resolved under the FLSA's "economic realities" test, whether such minimum wage
12 claim was made under Nevada law or the FLSA. See, *Myers v. Reno Cab Co.*, 492
13 P.3d 545 (Nev. Sup. Ct. 2021) (en banc).
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15 The *Myers* Litigation involves the proposed class action settlement, pursuant
16 to Rule 23, for over 800 taxi drivers. Two of the FLSA plaintiffs in this case, Daniel
17 Boynton and Clifton Bruce, are not *Myers* Litigation class members, the Court being
18 advised they only drove a taxi for three or eight shifts, respectively, for Reno Cab
19 during the relevant time period. As a result, the Court is advised they do not present
20 claims for minimum wage related damages cognizable as part of the *Myers*
21 Litigation settlement but are to receive payments of \$50 each in settlement of their
22 claims in this case. The remaining 36 FLSA plaintiffs in this case are members of
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1 the class of plaintiffs proposed for participation in the *Myers* Litigation class action
2 settlement. Those 36 FLSA plaintiffs receive additional potential benefits under the
3 FLSA (an opportunity to collect double or liquidated damages that is not provided
4 for by Nevada law) and under Nevada law (a right to the payment of a higher hourly
5 minimum wage than the one provided by the FLSA). The state court in the *Myers*
6 litigation will be charged with making appropriately supported, and thorough,
7 findings, as to the adequacy and fairness of that proposed class action settlement,
8 involving only Nevada state law claims, as required by Rule 23. Given the far
9 greater scope of the *Myers* Litigation, involving approximately 22 times as many
10 taxi drivers, the Court believes it can appropriately rely upon the state court
11 overseeing the *Myers* Litigation to make findings as to the fairness and adequacy of
12 the settlement of the claims of those 36 FLSA opt-in plaintiffs in this case under
13 Nevada law. Those state law claims, subsumed within the broader *Myers* Litigation
14 class action settlement, involves most of the relief available to those 36 plaintiffs in
15 this case under the FLSA, and those 36 plaintiffs are proposed *Myers* Litigation class
16 members. As a result, as requested by the parties and as envisioned by their
17 proposed Settlement, this Court, confines itself to determining whether the proposed
18 settlement of those 36 plaintiffs' rights to unique relief under the FLSA is properly
19 granted approval.

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22 Subject to the state court's ultimate approval of the proposed *Myers*
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24 Litigation class action settlement, the Court grants approval of the parties'

1 settlement of this case under the FLSA as provided for in their Stipulation of
2 Settlement. In doing so the Court observes it is hotly disputed whether the
3 plaintiffs were employees of the defendants, meaning a bona fide dispute exists as
4 to whether the plaintiff are entitled to relief under the FLSA, a requirement for any
5 settlement of FLSA claims to be approved. *See, Lynn's Food Stores Inc., v. United*
6 *States*, 679 F.2nd 1350, 1354 (11th Cir. 1982). As *Lynn's Food* also holds, it is
7 incumbent upon the district court to find any proposed FLSA settlement is fair. *Id.*
8 That “fairness” requirement is not expounded upon in *Lynn's Food* but most courts
9 have used the factors considered in approving class action settlements under Rule
10 23 to determine whether an FLSA settlement should be approved. *See, Silva v.*
11 *Miller*, 547 F. Supp. 2d 1299, 1303-04 (S.D. Fla. 2008) and other cases. Those
12 factors are discussed in *Churchill Vill. v. Genl. Elec.*, 361 F.3d 566, 575-76 (9th
13 Cir. 2004).

14 The parties’ Settlement Motion asserts the Court’s evaluation of the “fairness”
15 of the proposed settlement, in light of the proposed *Myers* Litigation class settlement
16 and the other relevant circumstances, should involve a more limited inquiry than if
17 the Court were approving a Rule 23 class action settlement. The parties point out
18 that the FLSA’s “opt in” process means this case’s settlement will not resolve the
19 claims of any unknown or unknowing “silent” class members that Rule 23 acts to
20 protect. In addition, that process was expressly set up by Congress to allow
21 individuals to litigate their FLSA claims as a voluntary “collective” while not
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1 necessarily ceding control over their legal claims to a representative, as in a Rule 23
2 class action. *See, Campbell v. City of Los Angeles*, 903 F.3d 1090, 1105 (9th Cir.
3 2018). The parties have fashioned their proposed settlement of this case with robust
4 protections for the 38 individual plaintiffs, allowing them to pursue individually, and
5 in an unimpeded fashion, their claims in a further, separate, litigation if they believe
6 the proposed settlement is inadequate. They argue as a result the Court should grant
7 approval to the proposed Settlement, subject to the state court's approval of the
8 *Myers* Litigation class action settlement, since it provides some meaningful measure
9 of additional relief under the FLSA to the 38 plaintiffs that they would not receive
10 as *Myers* Litigation class members. The Court agrees and in considering the fairness
11 of the proposed settlement limits itself to reviewing the proposed Settlement's
12 provisions that are unique to the 38 FLSA plaintiffs in this case, such Settlement
13 proposing to settle this case otherwise subject to the approval of the state court
14 overseeing the *Myers* Litigation.

20 This case was filed in January of 2021 and the FLSA's minimum hourly
21 wage is and was \$7.25 an hour during the entire time period at issue in this case.
22 During that same time period the Nevada minimum hourly wage was consistently
23 higher, at least \$8.25 an hour and currently is \$11.25 an hour. As a result, the
24 FLSA offers the 38 plaintiffs in this case no minimum wage recovery they cannot
25 secure (and in a higher amount) in a Nevada state law case, such as the *Myers*
26 Litigation. But the FLSA provides an additional liquidated (double damages)
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1 remedy pursuant to 29 U.S.C. Sec. 216(b) that would not be available to the 38
2 FLSA plaintiffs in this case under Nevada law.

3 The Court finds the proposed Settlement's terms, that are unique to the 38
4 FLSA plaintiffs in this case and secure a benefit specifically to them separate and
5 apart from the proposed *Myers* Litigation settlement, are fair. It grants approval to
6 those terms, with the entirety of the proposed Settlement's approval being further
7 subject to final approval by the state court overseeing the *Myers* Litigation. In
8 making that finding the Court observes that those terms applicable to the FLSA
9 claims at issue are not indicative of any collusion or unfairness. They provide a
10 service award payment of \$1,000 each to the four named plaintiffs in this case.
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12 The 38 FLSA plaintiffs will also share in a \$4,000 separately reserved settlement
13 fund in addition to their share of the settlement fund available for distribution to all
14 of the *Myers* Litigation class members. The 36 FLSA plaintiffs in this case
15 eligible to do so will, unless they elect to exclude themselves, be Participating
16 Claimants in the *Myers* Litigation class settlement and will receive a *pro rata* share
17 of what is estimated to be a net settlement fund of at least \$152,000 that will be
18 fully distributed to all claiming *Myers* Litigation class members. The Settlement
19 also requires written notice to all of the 38 plaintiffs in this case of the proposed
20 Settlement and grants them the right to exclude themselves from the Settlement
21 and a toll of the statute of limitations if they elect to do so, allowing them to
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1 commence a new and separate FLSA action that will not be impaired in any
2 fashion.

3 It is hereby Ordered that:
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5 The Settlement of this case is approved pursuant to the terms proposed by
6 the parties in the Settlement Motion and their Stipulation of Settlement (Doc. 71,
7 Ex. “A”).
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9 Within 20 days of the entry of this Order, and as provided for in the
10 Stipulation of Settlement, plaintiffs’ counsel shall mail to each of the 39 plaintiffs
11 in this case a copy of the Settlement Advisement Letter provided as an exhibit to
12 the Stipulation of Settlement. Plaintiffs’ counsel shall 91 days thereafter file a
13 statement with the Court confirming the Settlement Advisement Letter has been so
14 mailed and advising the Court of any plaintiffs who have elected to exclude
15 themselves from the settlement.
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17 Plaintiffs’ counsel shall advise the Court of the *Myers* Litigation’s proposed
18 settlement’s approval by the state court within 10 days of the effective date of that
19 settlement occurring and file a motion to have this Court enter a final judgment
20 dismissing this case with prejudice as to all plaintiffs except those, if any, who
21 elected to exclude themselves in a timely fashion as provided for in the previous
22 paragraph, any such excluding plaintiffs to have a statute of limitations toll on the
23 commencement of a new FLSA action as provided for in the Stipulation of
24 Settlement. In the event *Myers* Litigation’s proposed settlement’s effective date
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1 does not occur by November 1, 2024, the plaintiffs' counsel shall file a status
2 report with the Court advising it of the status. This case is otherwise stayed for all
3 purposes.
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6 IT IS SO ORDERED:
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8 DATED this 5th day of June 2024.
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10 United States District Judge
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